

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No.
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S MOTION TO APPROVE SETTLEMENT
WITH AFFILIATED FM INSURANCE COMPANY**

¹ On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

The Assignee seeks to take the action described herein. Objections must be filed and served within twenty-one (21) days from the service of this Motion. In the event an objection is timely filed and served, the Court will hold a hearing on August 26, 2021, at 3:00 p.m. to consider any timely filed objections, and to consider the Assignee's Motion to Approve Settlement with Affiliated FM Insurance Company before the Honorable Darren Farfante, Hearing Room 508, 800 East Twiggs Street, Tampa, Florida 33602.

If no objection is timely filed and served, then all creditors and parties in interest have consented to the relief sought in this Motion and the Assignee shall submit a proposed order to the Court. The deadline to object is twenty-one (21) days from service of this Motion.

Soneet Kapila, as assignee (the “Assignee”) for Laser Spine Institute, LLC, pursuant to Sections 727.109(7) and 727,111(4), Florida Statutes, moves this Court to approve the settlement reached between the Assignee and Affiliated FM Life Insurance Company (“AFM”) on the following grounds.

Background

1. On March 14, 2019, Laser Spine Institute, LLC (“LSI”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes (the “**LSI Assignment Case**”).

2. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of LSI (the “**Affiliated Assignment Cases**,” and together with the LSI Assignment Case, the “**Assignment Cases**”): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC;

Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

Relief Requested

3. The Assignee requests that the Court approve the Settlement with AFM, as further described below. Prior to the filing of the Assignment Cases, AFM issued insurance policy GO015 (the “**Policy**”) to LSI. LSI made a claim under the Policy for business interruption damages caused by Hurricane Irma.

4. In order to settle all claims and disputes that have arisen with respect to any and all claims, known or unknown, arising out of or relating in any manner to Hurricane Irma or any other events in September 2017 (the “**Subject Claims**”) under the Policy, LSI and AFM have agreed to the terms of the Mediated Settlement Agreement attached hereto as **Exhibit A** (the “**Settlement**”), which will be incorporated into any order approving the Settlement: In summary, pursuant to the Settlement, AFM will pay to LSI a total settlement sum of \$225,000.00, in addition to the amounts previously paid on the Subject Claims. Pursuant to the Settlement, the Assignee, the assignment estates, and AFM mutually release each other with respect to any further claims relating to the Policy.²

5. The Settlement is in the best interest of the estates because it avoids costly and unproductive litigation and preserves limited assets of the estates.

Basis for Relief Requested

6. Although the assignment statutes provide for court approval of settlements proposed by an assignee, the statutes do not set forth any specific criteria for approving

² The foregoing is a summary only. The terms of the Mediated Settlement Agreement control.

settlements. The Assignee submits that analogous bankruptcy principles should guide this Court's evaluation of the Settlement. "State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors." *Moecker v. Antoine*, 845 So. 2d 904, 912 n.10 (Fla. 1st DCA 2003).

7. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some bankruptcy courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), cert. denied 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

- i. The probability of success in the litigation;
- ii. The difficulties, if any, to be encountered in the matter of collection;
- iii. The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- iv. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

8. ***The Probability of Success in Litigation.*** The terms of the Settlement satisfy the above Justice Oaks factors. The first factor of probability of success weighs in favor of approval of the Settlement when considered with the remaining factors. While the Assignee is confident in the merits of the Subject Claims asserted, there is no certainty in litigation, including on appeal. Under the Settlement, the Subject Claims are being resolved, thereby

eliminating the risk and expense of prosecuting the Subject Claims and, in turn, will allow the parties and the Court to avoid protracted litigation in which AFM would continue to vigorously defend. The litigation would require a number of factual determinations that would likely preclude summary judgment and require a trial, including expert testimony.

9. ***The Collection Factor.*** The second factor, involving difficulties in collection, is not relevant. The issue is whether there is insurance coverage, which is a hotly contested issue.

10. ***Complexity of Litigation.*** The third factor of the complexity of the litigation weighs in favor of approval of the Settlement. Specifically, the Subject Claims are complex in nature, and will likely require a trial on the merits and expert testimony of multiple experts. In view of the foregoing, the complexity of the Subject Claims would result in multi-year litigation and a significant investment in legal and professional fees and costs.

11. ***Paramount Interests of Creditors.*** The last factor as to whether the Settlement is in the paramount interest of creditors weighs in favor of approval of the Settlement. The Assignee believes that the creditors of the Assignment Cases will support the approval of this Motion and the Settlement. Therefore, the Assignee believes that the Settlement is in the best interest of the creditors of the Assignment Estates.

12. For the foregoing reasons, the Assignee submits that the Settlement satisfies the Justice Oaks factors and falls well above the lowest point in the range of reasonableness and, accordingly, should be approved.

WHEREFORE, the Assignee respectfully requests that Court enter an order granting this Motion, approving the Settlement, and for such other and further relief as is just.

/s/ Edward J. Peterson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished on this 12th day of July, 2021 by the Court's electronic system to all parties receiving electronic service and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list attached and

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/s/ Edward J. Peterson

Edward J. Peterson

MASTER LIMITED NOTICE SERVICE LIST

October 1, 2020

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LSI HoldCo, LLC
LSI Management Company, LLC
Laser Spine Surgery Center of Arizona, LLC
Laser Spine Surgery Center of Cincinnati, LLC
Laser Spine Surgery Center of Cleveland, LLC
Laser Spine Surgical Center, LLC
Laser Spine Surgery Center of Pennsylvania, LLC
Laser Spine Surgery Center of St. Louis, LLC
Laser Spine Surgery Center of Warwick, LLC
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